IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1146 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUMANSINH RATANSINH CHAVDA - Appellant(s)
Versus
STATE OF GUJARAT & 2 - Opponent(s)

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Appearance :
MR HN JHALA for Appellant(s) : 1,
MR RC KODEKAR APP for Opponent(s) : 1,
None for Opponent(s) : 2,
NOTICE SERVED BY DS for Opponent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 11/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. The present appellant is a Chairman of Finance Company known as M/s. Vishal Finley's Pvt. Ltd., having its office at Gandhinagar. That on 15.12.2001, one Nishchal B. Thakar had applied for a loan for the purpose of motor car viz., Indica from the said company. The said company had given advance of Rs.2.00 lacs as loan amount with an interest at the rate of 14.5% per annum repayable in 35 equal monthly installments of Rs.7,972/- each and for that, he has executed an agreement at Annexure-A, affidavit at Annexure-B, hire purchase agreement at Annexure-D and irrevocable power of attorney at Annexure-E and copies of the same are annexed with the appeal. According to him, the said Nishchal B. Thakor had purchased Indica car bearing registration No.GJ-18-A-3409.

2. As per the say of the appellant, said Nishchal Thakar and other two persons have involved themselves into murder case. During the pendency of the investigation, above referred car was seized by the I.O. and, therefore, the present appellant had filed application under Section 451 of the Cr.P.C.

for the custody of the said motor car, which was hypotheticated with the said company. The Learned trial Court was pleased to allow said application and gave custody of the vehicle in question to the appellant pending trial and, thereafter, Sessions Case has been finally disposed of by the Learned Additional Sessions Judge and the accused were convicted. Therefore, the present appellant has submitted an application on 13.03.2006 for permanent custody of the said car, which came to be rejected vide order dated 31.03.2006. Copy of said order is annexed with this appeal as Annexure-F. Therefore, the present appeal has been filed by the appellant praying for permanent custody of the car in question and also to permit him to dispose it of it. Therefore, we issued notice making it returnable on 03.07.2006. On that day, I.O. was present. He informed this Court that the vehicle in question has been seized from the public place and during the pendency of the trial, it has been handed over to the finance company and even no objection has been given to that effect by the accused viz., Nishchal Thakar.

3. Heard learned counsel for the appellant, Mr.H.N. Zhala and learned APP Mr.R.C. Kodekar for the respondent-State.

4. Learned counsel for the appellant took us to the facts narrated in his appeal memo and the relevant documents annexed with this appeal. It has been established that now above referred accused has escaped from the custody and is absconding accused, but the facts remain that the vehicle in question has been seized from the public place and during the pendency of the trial, custody was handed over to the finance company and it is with them.

5. Learned APP has fairly stated that at present, the appeal is pending and for the purpose of deciding the appeal, presence of the vehicle is not required as it has been decided by the trial Court when custody was with the appellant during the pendency of the trial. Now appeal is filed by the accused against the order of sentence awarded by the Court below and Court below has not passed any order regarding the vehicle in question.

6. We have gone through the same and it appears that by way of order passed by the Court below, the present appellant is having custody of the vehicle in question.

7. In view of the aforesaid discussion and looking to the facts and circumstances of the case, without entering into other aspects of the matter, I am of the opinion that the custody of the vehicle in

question is required to be given to the appellant with a liberty to dispose of the same, more particularly, when the trial is already over and the accused viz., Nishchal Thakar has given no objection certificate before the Court below.

8. Under these circumstances, the appeal is allowed. The appellant be handed over the custody of the motor car bearing registration No.GJ-18-A-3409 on his furnishing solvent surety of Rs.1,50,000/- (Rupees One Lac Fifty Thousand Only) before the Court below. The custody shall be given on proper identification and on acknowledging receipt thereof. Court below is directed to handover the registered book to the appellant after keeping certified copy of the same with the record.

(R.P.DHOLAKIA, J.) ***(S.D.DAVE, J.)***

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